

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8133 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

RAJESH @ RAJU @ BUCHIYO

KANTILAL SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 27.3.1996 passed by the Police Commissioner, Ahmedabad City detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 27.3.1996 itself and since then the petitioner is under detention lodged at District Prison,

Surat. The present Special Civil Application is preferred in this Court on 23.10.1996 and on 24.10.1996 Rule returnable within two weeks was issued but so far neither any reply has been filed nor any affidavit in rejoinder of the Detaining Authority has been filed.

The grounds enclosed with the detention order show that five criminal cases under Prohibition Act with regard to 5 to 35 litres country liquor were registered against the petitioner. Three matters are pending in the Court and in two matters the police investigation was going on at the time when the detention order was passed. After keeping note of the allegations with regard to the aforesaid criminal cases the Detaining Authority has referred to the evil consequences of the consumption of country liquor and the latthakand with which the petitioner is not concerned. The Detaining Authority has recorded that the petitioner was engaged in antisocial activities and has become problem to the public order. Statements of four witnesses with regard to the incidents dated 3.3.1996 and 20.2.1996 have also taken into consideration and on the request of the witnesses for the purpose of their security the provisions of section 9(2) of PASA Act have been invoked. It appears that the petitioner has been detained as bootlegger and in order to prevent him from continuing his antisocial activities the detention order has been passed.

The detention order has been challenged on more than one grounds. The learned counsel for the petitioner has argued that even if the allegations levelled against the petitioner have been taken to be true do not amount to breach of the public order and at the most it can be said to be a case of the breach of law and order.

That the reasons contained in the judgment dated 4.10.1996 in Special Civil Application No. 3879 of 1996 I am inclined to hold that the allegations and material relied upon by the Detaining Authority against the petitioner do not constitute a case of breach of public order and the detention order has been passed for the reasons of breach of law and order which is not relevant to the passing of the detention order under PASA Act, the detention order therefore, deserves to be quashed and set aside on this ground alone.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 27.3.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed

to release the petitioner and set him at liberty
forthwith if not required in any other case. Rule is made
absolute.
